IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No.816 of 2001
(Old No. 32 of 2001)

Date of decision :-06-12-2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-06.12.2007 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 816 of 2001
(Old No. 32 of 2000)

Umesh Chandra Joshi
S/o Sri Harish Chandra Joshi
R/o Village Bhingari
P.O. Golchaura, Tahsil Gangolihat
District Pithoragarh ….Appellant

Versus

State … Respondent

Mr. Divakar Chamoli, learned Amicus Curiae for the appellant.
Mr. G.S. Sandhu, learned Government Advocate with Mr. B.S. Parihar, leaned Brief Holder for the respondent.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

This appeal has been directed against the judgment and order dated 16.12.1999, passed by Sessions Judge, Pithoragarh in Sessions Trial No. 30 of 1997, whereby the appellant has been convicted u/s 302 Indian Penal Code, 1860 (hereinafter as I.P.C.) and sentenced to undergo imprisonment for life.

2. The facts, in nutshell, are that the informant Chandra Singh PW3 lodged an F.I.R. Ex.Ka.1 on 31.03.1997 at 11:35 a.m. at Police Station Berinag alleging therein that his maternal grand daughter Km. Rita Rawat had been living with him and studying at Ganai Inter College. In the year 1997, she had been studying in Class-X and was appearing in the examination of High School. Her examination center was at Ganai Inter College. In the morning of 31st March, 1997, she had gone to appear in the second paper of Mathematics in the college. After appearing in the examination, she was

coming with her classmates. At about 10:05 a.m. when the deceased Rita Rawat came out about 50 yards ahead from school, the accused/appellant armed with 'bariath' came there and dragged the deceased Rita Rawat and gave several blows on her neck due to which she fell on the ground. Blood started oozing out of her neck. The complainant Chandra Singh PW3 and other persons made hue and cry due to which the accused/appellant fled away towards the forest. The deceased Rita Rawat succumbed to her injuries on the spot. It was further alleged in the F.I.R. that the incident was witnessed by the informant Chandra Singh PW3, Km. Pushpa Rawat PW2, Km. Deepa Rawat PW1 and other students who were present at the spot at the time of incident. On the basis of the F.I.R. Ex.Ka.1, a chick report Ex.Ka.3 was prepared and necessary entries were made in the general diary. The Investigation of the case was taken up by S.I. Sri Budhi Lal PW4. He went to the place of occurrence; took the dead body into his possession; prepared inquest report; site plan Ex.Ka.11 and recorded the statement of the witnesses. He also arrested the accused/appellant and recorded his statement. After taking the accused into custody, he alongwith other witnesses came at the place where the 'bariath' was hidden by the accused/appellant. He took the 'bariath' into his possession; sealed the same and prepared memo Ex.Ka.12 After completing the investigation, he submitted the chargesheet Ex.Ka.-14 against the accused/appellant before the court.

3. After submission of chargesheet, the accused/appellant was committed to the court of Sessions for trial and the trial court framed charges u/s 302 I.P.C. against the

accused/appellant. The accused/appellant denied the charges levelled against him and claimed his trial.

4. The prosecution is support of its case examined as many as six witnesses. Km. Deepa Rawat PW1 and Km. Pushpa Rawat PW2 are the eyewitnesses of the incident. Both the eyewitnesses are class fellow of the deceased Rita Rawat. Both of them knew the accused/appellant. Chandra Singh PW3, the maternal grand father of the deceased is the informant of the case. He is also an eyewitness of the incident. On the date of incident, he had gone to school to pick up the deceased Rita Rawat. S.I. Budhi Lal PW4 is the Investigating Officer who has investigated the case and submitted the chargesheet Ex.Ka.14 before the court. Dr. K.S. Mehta PW5 is the Medical Officer who conduced the post mortem on the body of the deceased. Sri Vikash Saxena PW6 is the Judicial Magistrate who recorded confessional statement u/s 164 Cr.P.C. of the accused/appellant.

5. The accused-appellant was examined u/s 313 Cr.P.C. and he has pleaded not guilty to the offence. He has stated that he has been falsely implicated in this case on account of enmity. He has further stated that he had illicit relation with the deceased Rita Rawat which the villagers could not tolerate.

6. The learned Sessions Judge on appreciation of the evidence held the accused/appellant guilty and convicted & sentenced him as mentioned above.

7. We have heard learned counsel for the parties and perused the record.

8. At the outset, it needs to be mentioned here that it is not disputed that the deceased Rita Rawat died on account of injuries sustained by her on the date of occurrence. Dr. K.S. Mehta PW5, Medical Officer, conducted the postmortem of deceased Rita Rawat on 01.04.1997 at 9:30 a.m. and found the following ante mortem injuries on the person of the deceased:-

> *1. Incised wound left side of face extending from cheek to mastroid process cutting lower part of pinna (ear) size 9 cm. x 2 cm. muscle deep in the middle portion 3 cm. x cuticular deep on the cheek.*
>
> *2. Incised wound cuticular deep sickle shaped extending from lower part of cheek mandible to lower part of mastoid process 12 cm. in length 5 cm. gaping in mandibular neck area.*
>
> *3. Incised wound over left side of neck sickle shaped size 4.5 cm. x 1 cm. x skin deep.*
>
> *4. Incised wound over left side of neck parallel to injury no.3, 0.5 cm. below. Size 5 cm. x 0.5 cm. skin deep.*
>
> *5. Incised wound left side of neck directing posterior anterior size 4 cm. x 2 cm. muscle deep.*
>
> *6. Incised wound over anterior aspect of neck (middle part) horizontally placed size 6.5 cm. x 3.5 cm. cutting apart trachea oesophagus, muscles and major vessel on pressing chest. Vertibral body expressed with wound mark.*
>
> *7. Incised wound over upper part of neck below chin oblique in direction size 2 x 1 cm. x skin deep.*
>
> *8. Incised wound over right hand size 11 x 1.5 cm. x muscle deep. Tendons were cut and the wound was deep upto bones.*
>
> *9. One incised wound left hand dorsal aspect which is from proximal phalanx (of thumb) to forth metacarpo phalangial joint and skin deep size 6 x 0.5cm.*

In the opinion of Medical Officer, the death of the deceased was caused due to shock and haemorrhage as a result of ante mortem injuries. The injuries could have been caused by 'bariath'. The Medical Officer further opined that the death occurred on 31.03.1997 at about 10:00 a.m. Thus, it is amply proved that the deceased died on account of the injuries sustained by her on 31.03.1997.

9. Now, we have to consider who is responsible for the injuries caused on the person of the deceased Rita Rawat. The case rests on the direct evidence. To prove the prosecution case, the prosecution has adduced the evidence of Deepa Rawat PW1 and Pushpa Rawat PW2 as eyewitnesses of the incident. Both of them have stated in their evidence that they knew the deceased Rita Rawat. The deceased Rita Rawat was their classmate in Class-X. They have stated that they were appearing with the deceased Rita Rawat in High School Examination in Ganai Inter College in the year 1997. On 31/03/1997, they have gone to take the examination of Mathematics II-paper. Both the eyewitnesses alongwith the deceased appeared in the said examination paper in the morning session. The paper was completed by the students at 10:00 a.m. in the morning on 31/3/1997 and thereafter, the deceased Rita Rawat alongwith Deepa Rawat PW1, Pushpa Rawat PW2 and other classmates were going to their respective homes. When they reached about 50 meters ahead from their school building, they saw the accused/appellant Umesh Chandra Joshi armed with 'Bariath', 'a sharp edged weapon' coming before them. He dragged Km. Rita Rawat and inflicted 4-5 injuries on her neck. Due to the said injuries, blood started oozing from her body. After receiving the injuries, the deceased Rita Rawat fell on the

ground. When the accused/appellant was inflicting injuries upon the person of the deceased, all the girls including Deepa Rawat PW1, Pushpa Rawat PW2 and maternal grandfather of the deceased raised alarm. On seeing Chandra Singh PW3, the maternal grandfather of the deceased, the accused/appellant fled away towards the forest. Both the eyewitnesses have further deposed that they knew the accused/appellant Umesh Chandra Joshi who was the resident of Village Bhingadi. Both the eyewitnesses have identified 'bariath' before the Court by which the injuries were inflicted upon the person of the deceased by the accused/appellant. The prosecution also adduced the evidence of Chandra Singh PW3, the maternal grandfather of the deceased as an eyewitness. He has stated in his deposition that the father of the deceased has died earlier and the deceased Rita Rawat was the only daughter of her parents. He had further stated that the deceased Rita Rawat had been living with him. He also deposed that he always used to go her school to collect the deceased Rita Rawat from the school. He has narrated the entire incident and corroborated the evidence of Deepa Rawat PW1 and Pushpa Rawat PW2 on all material particulars with regard to the incident. He has also identified the 'bariath' before the Court. We have perused the entire evidence of the eyewitnesses. The trial court has minutely scrutinized the evidence of all the eyewitnesses and found them to be implicitly truthful and reliable. The presence of the eyewitnesses at the place of occurrence was explained and their evidence cannot be thrown-out as un-reliable and tainted because their presence at the place of occurrence is natural. With the assistance of learned counsel for the parties, we have gone through the entire evidence of eyewitnesses adduced by the prosecution

and on our independent appreciation, we find the evidence of the eyewitnesses consistent and reliable. Deepa Rawat PW1, Pushpa Rawat PW2 and Chandra Singh PW3 had been cross-examined at length but nothing could have been elicited in their cross-examination to discredit their testimony.

10. Km. Deepa Rawat PW1, Km. Pushpa Rawat PW2 and Chandra Singh PW3 have stated in their evidence that the accused/appellant had 'bariath' in his hand and he inflicted blows on the neck of the deceased by 'bariath'. The prosecution has also adduced the evidence of Dr. K.S. Mehta PW5 who conducted the autopsy on the dead body of the deceased and found ten incised injuries on her person. It is also pertinent to mention here that Dr. K.S. Mehta PW5 has found a number of sickle shaped injuries on the person of the deceased (as mentioned in para 8 of our judgment). Thus, the medical evidence also corroborates the evidence of the eyewitnesses produced by the prosecution.

11. The prosecution has also adduced the evidence that 'bariath' which was used in the commission of the offence was discovered on the pointing out of the accused/appellant. The prosecution in support of this fact adduced the evidence of S.I. Budhi Lal PW4, the Investigating Officer of the case. He had stated in his evidence that immediately after lodging the report, S.I. Budhi Lal PW4 proceeded at the spot and started investigation. When he received the information from the informer that the accused/appellant is at Tapowan, he immediately went there; arrested the accused/appellant and recorded his statement. The accused/appellant told him that he would point out the 'bariath' by which he had committed the murder of the deceased Rita Rawat. Pursuant to the said

statement, the Investigating Officer took the accused/appellant to the place where he had concealed the said ‘bariath’. When the Investigating Officer reached the place, the accused/appellant pointed out the ‘bariath’ and took out the same with blood stained on it from the bushes. The Investigating Officer S.I. Budhi Lal took the same into his possession, got it sealed and prepared the site plan. The said ‘bariath’ was identified by the Investigating Officer before the Court as Ex.1. The Investigating Officer has also proved the memo of the recovery of ‘bariath’ as Ex.Ka.12. He has stated that the said recovery was made in presence of the witnesses. The Investigating Officer was cross examined at length but nothing could be elicited in his cross examination to discredit his testimony. The testimony of the police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. It is not proper judicial approach to distrust and suspect upon S.I. Budhi Lal PW4 without good grounds. It will depend upon the facts and circumstances of each case and no principle of general application can be laid down. It is noteworthy that during the course of the cross examination of the witness, the defence did not even give any suggestion as to why the Investigation Officer was falsely deposing against the accused/appellant. There is absolutely no material or evidence on record to show that S.I. Budhi Lal PW4 had any reason to falsely implicate the accused/appellant. Therefore, the evidence of the Investigating Officer with regard to recovery of ‘bariath’ on the pointing out of the accused/ appellant is credible and cogent.

12. The incident took place at 10:05 a.m. on 31.03.1997 and Chandra Singh PW3 reported the matter to police station Berinag on the same day at 11:35 a.m. The distance between the police station and the place of occurrence is about 26 kms. Thus, there is a prompt F.I.R. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. The fact that the accused/appellant caused fatal blows upon the deceased Rita Rawat further stands corroborated by the prompt FIR in which the name of the accused/appellant has been shown.

13. The prosecution has relied upon the evidence of Deepa Rawat PW1, Pushpa Rawat PW2 and Chandra Singh PW3 who had seen the accused/appellant inflicting the injuries on the person of the deceased. There is sufficient evidence of the eyewitnesses to prove the guilt against the accused/appellant. Apart from this, the prosecution has relied upon the evidence of recovery made u/s 27 of the Indian Evidence Act on the pointing out of the

accused/appellant. This is an additional evidence to support the ocular testimony. The prosecution has further relied upon the confession made by the accused/appellant before Sri Vikas Saxena, Judicial Magistrate PW6. Sri Vikas Saxena, Judicial Magistrate PW6 has stated in his evidence that he was posted as Judicial Magistrate, Pithoragarh when the accused/appellant was brought before him for recording the statement u/s 164 Cr.P.C. The accused/appellant was brought before him on 01.04.1997 in the police custody and he warned him that he is not bound to give any confessional statement and in case such statement was given by him, it would be read against him and he could be convicted on that statement alone. Sri Vikas Saxena PW6 granted the accused/appellant time for reflection to consider as to whether he wants to give the confessional statement u/s 164 Cr.P.C. or not. Sri Vikas Saxena PW6 fixed the date for recording the confessional statement u/s 164 Cr.P.C. on 03.04.1997. On 03.04.1997, the accused/appellant was brought before him from jail and his confessional statement was recorded. After putting certain preliminary questions and giving statutory warnings, the Judicial Magistrate was satisfied that the accused/appellant was giving the confessional statement without any inducement and pressure. The Judicial Magistrate thereafter proceeded to record the same. He also recorded his satisfaction that the statement of the accused/appellant was given voluntarily on his own accord. The accused/appellant has given the following confessional statement:-

"बयानः अभियुक्त उमेश चन्द्र जोशी
अन्तर्गत धारा 164 द.प्र.सं

1. प्रश्नः तुम्हारा नाम क्या है?

उः उमेश चन्द्र जोशीA
iz'u% firk dk uke\
m% Jh gjh'k pUnz tks'khA
iz% fuoklh dgkW ds gks\
m% tks'khxkWo fHkox<+h iVV~h Js= fleyrk rg0 xaxhyhgkr ftyk fiFkkSjkx<+A
iz% D;k rqEgsa irk gS fd tks rqe c;ku ns jgsa gks og lk{; esa rqEgkjsa fo:) iM+k tk;sxk rFkk bl ij rqEgsa ltk Hkh gks ldrh gS\
m% th gkWA
iz% rqEgsa c;ku nsus ds fy, fdlh us ekjk ihVk ;k Mjk;k /kedk;k rks ugha gSa\
m% th ughaA
iz% D;k rqe LosPNk ls fcuk fdlh ncko ds ;g c;ku ns jgs gks\
m% th ughaA
iz% rqEgkjh mez fdruh gS\
m% yxHkx 19 o" kZA
iz% rqEgkjh f'k{kk fdruh gS\
m% gkbZ Ldwy ikl fd;k gSA

2- e`rdk dk uke jhrk jkor gS mls eSa yxHkx 7&8 lky ls tkurk FkkA e`rdk dk ?kj esjs ?kj ls yxHkx vk/kk fd0eh nwjh ij FkkA esjh mlesa ?kfu" Brk yxHkx ,d o"kZ iwoZ ls c<+h FkhA eSa jkor QksVks LVwfM;ks x.kkbZ esa QksVksxzkQh dk dke lh[kus tkrk Fkk vkSj e`rdk x.kkbZ esa b.Vj dkWyst esa d{kk 10 esa iM+rh Fkh blfy, lkFk&lkFk vkrs tkrs FksA /khjs&/khjs ?kfu" Brk izse esa cny x;h A ge yksxksa ds chp izse i= Hkh pyrs FksA

2- jhrk vius ekek ds ;gkW jgrh Fkh vkSj mldh ekW vius llqjky esa jgrh FkhA mlds firk dh e`R;q gks pqdh gSA eSa fn-13@12@96 ls 25@12@96 rd mlds ?kj es 'kke dks Nqi dj jgrk FkkA jkr 8 ctsa lqcg rd jgrk Fkk D;ksafd og eq>s cqyk;k djrh Fkh bl chp pkj ckj esjs mlls 'kkfjfjd lEcU/k Hkh gks x;sA

3- blds ckn eS mlls feyus 18@02@97 ls 20@02@97 rd Hkh x;kA 20@02@97 ge yksxksa ckrs djrs gq, e`rdk dh ekW ns[kkA ekW us tc jhrk ls iwNk fd ;g dkSu rks mlus esjk uke ckr fn;k Fkk vkSj ;g Hkh crk fn;k fd eSa blls I;kj djrh gwW vkSj blh ls gh ‘kknh d:axh ugh arks eSa uqoku [kk dj ej tkÅWxhA

4- blds ckn fna 27@03@97 dks jhrk ds iM+ksLk ds vkB yM+ds euksgj flag jkor] iwjuflag jkor] dqUnuflag jkor] njcku flag jkor vkfn us eq>s ?kj ls cqykdj cqjh rjg ihVk D;ksafd os yksx eq>s jhrk ?kj mlh csbTtrh djkuk pkg jgs Fks ysfdu eSa ugh x;kA blds igys jhrk eq>ls rhu cts fey pqdh vkSj mlus eq>ls jkr 10 ctsa vkus dks dgk Fkk vkSj ikWp iUus dk ysVj Hkh fn;k Fkk ysfdu eSa ugha x;kA

5- mu yM+dks us eq>ls dgk fd rqEgkjs dkj.k gekus xkWo dh cnukeh gks jgh gS vkSj esjs ls vkB izse i= Nhu fy, vkSj jhrk dks cnuke djus yxsA eSa fn- 31@3@97 dks x.kkbZ losjs lk<+s 6 cts jhrk ls feyus x;k og Ldwy ijh{kk nsus tk jgh FkhA eSus mlls dgk fd jhrk eSaus rqEgkjs [kkfrj eSaus bruh ekj [kkbZ gS rks mlus mYVk eq> ij vkjksi yxkrs gq, dgk fd rqeus vius gkFk ls gh ysVj bu yM+dks dks fn, gSa o izse ds ckjs esa crk;k gS ftl dkj.k esjh cnukeh gks jgh gSA rFkk os yM+ds esjk uktk;t+ Qk;nk mBkdj ogh dke djuk pkgrs gS tks rqeus esjs lkFk fd;k gSA mlus dgk fd mu yM+dks us rqEgsa ihVk rks Bhd fd;k vkt Hkh pkj yM+ds rqEgsa ihVus vkus okys gS rqe ;gkW ls Hkkx tkvksA xqLls esa mlus ,d iRFkj mBk dj ekjkA fQj og ijh{kk nsus pyh x;hA

6- mlds ckn eSa vius ?kj lok vkB ctsa vk;k rks eSaus ,d jksVh [kkbZA ?kj

esa dksbZ ughaA eSaus gkFk esa cM+;kM fy;k vkSj lh/ks x.kkbZ vk;kA t cog 10 ct ds 10 feuV ij vkB nl yM+fdvksa ds lkFk Ldwy ls 50&60 ehVj nwj vk jgh Fkh rks eSaus mlls dgk jhrk :d tkvks rks vkSj yM+fd;kW mij jkLrs ij pyh x;ha vkSj og ogha ij cSB x;hA pwWfd eSa xqLls esa lqcg ls mldh ckr ij Fkk blfy, eSaus mlds cSBRks gh mlij okj cM+;kM ls okj dj fn;k tks mlds nkfgus gkFk ij yxkA eSaus vxyk okj lkeus jhrk ds xys ij fd;k ftlls og yqM+d x;hA yqM+drs le; mlus eq>ls dgk fd eSa thrs th rqEgkjh ugha gks ldh eSa rels ‘kknh djuk pgkrh Fkh vc eSa ugha cpwWxh vkf[kjh ckj esjk gkFk Fkke yks vkSj eSaus mldk gkFk Fkke fy;kA mlus ;g Hkh dgk Fkk fd rqe dksVZ esa viuk vijk/k Lohdkj djuk fd ;g vijk/k eSaus fd;k gSA esjh ekW dh ns[kHkky Hkh djukA eSaus cM+;kM+ ls jhrk Ikj rhu izgkj fd, Fks ftlls gh og ejh FkhA

7- blds ikWp feuV ckn iqfyl vk x;h Fkh tks ijh{kk M~;wVh ls vk jgs eSaus cM+;kM+ vius lj ekjrs gq, dgk fd eSaus

[kwu fd;k gS eq>s fxjQrkj djksA eSaus og cM+;kM+ Hkh mugs ns nhA mUgksaus ogh eq>s fxjQrkj dj fy;kA

8- eSaus viuh izsfedk jhrk dh vkRek dh ‘kkfUr ds fy, viuk vijk/k Lohdkj fd;k gS D;ksafd eSa mlls lPPkk I;kj djrk FkkA tc eSaus nks okj e`rdk dh xnZu ij fd, rks [kwu dh /kkjk lkeus mlds diM+ks ij cg jgh FkhA

eSaus mes’k pUnz tks’kh iq= gjh’k pUnz tks’kh dks le>k fn;k gS og mijksDr laLohD`fr djus ds fy, ck/; ugh gSa vkSj ;fn og ,slk djrk gS rks ;g LakLohD`fr mlds fo:} lk{; es mi;skx es

ykbZ tk ldrh gSA eq>s fo’okl gS fd ;g LakLohd`fr vfHk;qDr }kjk viuh LosPNk ls dh xbZ gS ;g Lo;a esjs }kjk vfHk;qDr ds ‘kCn c ‘kCn fy[kk x;kA ;g vfHk;qDr dks i<+ dj lquk;k x;k ftls lqudj mlus c;ku dk lgh gksuk Lohdkj fd;k gSA

fodkl lDlsuk

U;k- eftLVzsV

fiFkkSjkx<+A**

14. The tone and tenor of the statement clearly reveals that it is voluntary confessional statement. The accused/appellant had clearly confessed that he committed the murder of the deceased Rita Rawat. It was attempted by the defence that the answer recorded in question No.5 reveals that it was not voluntary. Sri Vikas Saxena, Judicial Magistrate PW6 appeared before the Court and he had stated in his statement that he put a compound question so this answer had been recorded. Perusal of the entire statement given by the accused/appellant reveals that Sri Vikas Saxena, Judicial Magistrate was very conscious that confessional statement recorded by him should be voluntary. So, if we read the entire question and answer, it reveals that the accused/appellant wanted to say that it was his voluntary statement. The Magistrate concerned has taken all precautions while recording the voluntary statement of the accused/appellant and there is no scope to hold that the confessional statement cannot be read in evidence. We are of the opinion that the learned Sessions Judge was justified in accepting the confessional statement given by the accused/appellant.

15. On a conspectus of various relevant features of this case including the genesis; the nature of the incident; the nature of weapon carried by the accused/appellant at the time of occurrence, it cannot be concluded from the prosecution evidence or from any probability arising from the record that the accused/appellant had falsely been implicated in this case. After going through the same, we do not find any reason to disbelieve the version of the prosecution witnesses. We are completely in agreement with the findings recorded by the trial court and we find that the prosecution has been able to establish the case beyond reasonable doubt. Thus, we do not find any force in the contention of the learned Amicus Curiae.

16. The learned Amicus Curiae contended that if the entire evidence is found reliable against the accused/appellant then the offence committed by the accused/appellant comes within the purview of Exception I to Section 300 I.P.C. It was further contended that the accused/appellant inflicted the injuries on the person of the deceased by 'bariath' while he was deprived of all the powers of self-control by sudden and grave provocation. It was further contended that the grave provocation. It was further contended that the accused/appellant has stated in his confessional statement recorded u/s 164 Cr.P.C. that on 27.03.1997, neighbourhood boys of the deceased inflicted injuries on the person of the accused/appellant on the pretext that he had illicit relation with the deceased and he had defamed the entire locality. It was further contended that the accused/appellant had further stated that on 31.03.1997, on the date of the incident, he went at Ganai Inter College at 6:00 a.m. and met the deceased Rita Rawat. The accused/appellant told her that he

had been beaten by her neighbourhood boys and he had tolerated the said beating due to her sake. In reply to this, the deceased Rita Rawat told him that he had handed over the letters written by her to him to those boys and those boys had started blackmailing her. She also asked him to go from there and also thrown stone on him. Thereafter, she went inside the examination hall to appear in her examination. Thereafter, the accused/appellant came back to his house and he ate chapatti, managed 'bariath' and came to school again at about 10-10:05 a.m. When he saw the deceased coming out of the examination hall, he stopped her and inflicted the injuries. The learned Amicus Curiae further stressed that the conversation between the deceased and the accused/appellant at about 6:00 a.m. in the morning led the accused/appellant to lose his self-control by sudden and grave provocation, so he committed the offence. Learned G.A. refuted the contention and contended that the alleged provocation cannot be said to be grave and sudden provocation under Exception 1 of Section 300 I.P.C. There was interval in between the provocation and the commission of the offence, as such, the accused/appellant is not entitled to the benefit of Exception 1 of Section 300 I.P.C.

17. To attract the Exception 1 of Section 300 I.P.C. following conditions must be fulfilled :-

i. The deceased must have given provocation to the accused.

i. The provocation must be grave and sudden.

ii. The accused by reason of the said provocation shall have been deprived of his power of self control.

iii. He should have killed the deceased during the continuance of the deprivation of the power of self control.

v. The accused must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

18. It is also pertinent to mention here that the mental act created by the act of the victim should be considered in ascertaining whether the act committed by the accused/appellant is in response to the grave and sudden provocation in this case. According to the confessional statement of the accused/appellant, the accused/appellant met the deceased in the morning at about 6:00 a.m. on the date of the incident. The accused/appellant told her that he had been beaten by the boys of her neighbourhood on the ground that he had illicit relation with her (deceased Rita Rawat) and he tolerated the said beating due to her sake. The deceased said to him that he had handed over her letters written to him to the boys and now they were defaming her. She was annoyed with him and she thrown a stone on him and asked him to go from there. It is not the case of the prosecution or the defence that immediately after this, the accused/appellant committed the murder of deceased Rita Rawat. It is revealed from the above confessional statement that the accused/appellant went to his house, took chapatti and managed 'bariath'. Thereafter, he came to the school at about 10:00 a.m. in the morning on the date of the incident and committed the murder of the deceased. Thus, there is sufficient gap between the alleged provocation and the assault causing the death of the deceased. There is a long interval between the alleged provocation and the commission

of the offence. As such, Exception 1 of Section 300 I.P.C. would not be applicable in this case.

19. The Hon'ble Apex Court in the case of **K.M. Nanavati Vs. State of Maharashtra** reported in **AIR 1962 SC 605** has held at para 85 and 86 as under :-

> *"85. The Indian Law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to S.300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act cause grave and sudden provocation for committing the offence (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.*
>
> *86 Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self-control. But, if his version is true-for the purpose of this argument we shall accept that what he has said is true-it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self-control, but, on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six round, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bed-room of Ahuja and shot him dead. Between 1-30 p.m., when he left his house, and*

4-20p.m. when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused-though we do not believe that – it does not affect the question, for the accused entered the bed-room of the deceased shot shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. We, therefore, hold that the facts of the case do not attract the provisions of Exception 1 to S.300 of the Indian Penal Code."

20. The Hon'ble Apex court in the case of **Namala Subbarao Vs. State of A.P.** reported in **(2007) 1 SCC (Cri) 155** has held at para 8 as under :-

"8 Learned counsel next submitted that this case is covered under Exception 1 to Section 300 IPC as the accused was under grave and sudden provocation of his wife not abiding by his direction. We do not think, in the present case, that it can be said to be on account of grave and sudden provocation to the accused for dealing with his wife in this manner. This cannot be said to be sudden provocation that the wife did not come to the house of the accused on message being sent to her. The accused had reasonable time to go to the carpenter's shop for picking up baditha and dealt blows to the deceased with the baditha. This was not a grave and sudden provocation to give a cause to such fatal injuries to his wife. Therefore, this case cannot be covered under the clause of grave and sudden provocation. Hence, the contention of the learned counsel for the accused cannot be sustained and accordingly we reject the same."

In view of the above, we are of the opinion that there was a long interval between the alleged provocation and the commission of the offence. As such, Exception 1 of Section 300 I.P.C. would not be applicable in this case. Thus, we do

not find any force in the contention raised by the learned Amicus Curiae.

21. In view of the aforesaid reasons, we hold that the prosecution has established the guilt beyond reasonable doubt against the accused/appellant. We find that the learned trial court has rightly convicted and sentenced the accused/appellant and there is no infirmity in the impugned judgment and order passed by the learned trial court in Sessions Trial No. 30 of 1997. The accused-appellant is liable to be convicted and sentenced as awarded by the trial court. Hence, the appeal is liable to be dismissed and is hereby dismissed.

22. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

(J.C.S. Rawat, J.) (Rajeev Gupta, C.J.)

Dated 6th December, 2007
Shiv/VK